

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A JUDGE
No. 04-239

CASE NO. SC05-851

JUDGE RICHARD H. ALBRITTON, JR.

**MOTION TO STRIKE AND RESPONSE TO THE JUDICIAL
QUALIFICATIONS COMMISSION'S MOTION TO COMPEL**

COMES NOW, the Honorable Richard H. Albritton, Jr., by and through his undersigned attorneys and files this, his Motion to Strike and Response to the Judicial Qualifications Commission's Motion to Compel Judge Albritton's deposition pursuant to Rule 7(b) and states in support as follows:

1. The Judicial Qualifications Commission (the "JQC") improperly filed its Motion to Compel before the Florida Supreme Court. Judicial Qualification Rule 7(b) requires all pretrial motions to be filed for consideration by the Chair of the Hearing Panel. As such, Judge Albritton respectfully requests this Court to strike the JQC's Motion as premature.

2. On November 7, 2005, the Chair of the Hearing Panel requested Special Counsel for the JQC to respond to Judge Albritton's Motion to Compel Witness Statements that was served on November 2, 2005. (See Motion to Compel with exhibits, attached as Exhibit A; Hearing Panel request for a response, attached as

Exhibit B). This Motion was served after Judge Albritton made several demands for the material, including witness statements, that the Investigative Panel considered in finding probable cause. (See generally Exhibit A). Special Counsel has refused to provide the witness statements without apparent legal justification. See In re Graziano, 696 So. 2d 744, 751 (Fla. 1997) (“[D]iscovery pursuant to Rule 12(b) allows an accused judge to have full access to the evidence upon which formal charges are based.”).

3. Special Counsel requested an extension to respond to the Judge’s Motion to Compel representing that they had insufficient time to prepare a responsive pleading. Prior to filing any response to the Judge’s Motion to Compel pending before the Hearing Panel, Special Counsel filed its Motion to Compel before the Florida Supreme Court. It appears that the JQC is attempting to circumvent the authority of the Hearing Panel by requesting the Court to compel Judge Albritton’s deposition before the Hearing Panel can consider the Judge’s entitlement to the witness statements.

4. While the JQC’s Motion to Compel suggests that it has requested the Judge to schedule his deposition since May 2005, the Amended Formal Charges were only filed on September 1, 2005. Moreover, Special Counsel has represented that he has had insufficient time to even file a responsive pleading to the Judge’s Motion to Compel since November 7, 2005. Clearly, Special Counsel has not been

available to depose the Judge for a significant period since the Amended Formal Charges were filed. During this same time, Special Counsel has improperly withheld witness statements which are clearly discoverable. Accordingly, any contention that Judge Albritton has unreasonably delayed the scheduling of his deposition is disingenuous.

5. To the contrary, undersigned counsel has repeatedly emphasized Judge Albritton's desire to cooperate with the JQC's investigation. Judge Albritton has simply followed counsel's advice to schedule the deposition once he has the ability to provide meaningful testimony. The Amended Formal Charges in this matter contain thirty-six separate charges, most of which fail to provide any detailed information, such as the party's name or the date the alleged incident occurred, which would enable the Judge to adequately and competently respond to the JQC's questions. Judge Albritton has presided over thousands of cases a year, rendering his ability to recall any one particular incident virtually impossible without the benefit of refreshing his recollection as to names, places and dates. The JQC's determination to set the deposition without the ability to review the allegations in question suggests the JQC's attempt to "trick" the deponent rather than conducting a fair investigation into the issues.

6. The JQC has previously attempted to depose a responding judge while simultaneously withholding evidence to which the judge is entitled, arguing, in pertinent part, as follows:

Based on the Motion for Protective Order filed before the Hearing Panel and the Motion to Stay respondent's deposition before the Florida Supreme Court, it is evident that the respondent wishes to appear for deposition only after she has learned the substance of each and every witness interview conducted by the JQC's private investigator. Common sense would indicate that the truth would be best served if one's adversary is not privy to one's investigative work product.

(See JQC's Motion in Opposition to Judge Cynthia Holloway's Motion to Compel, p. 6, attached as Exhibit C). The Florida Supreme Court rejected the JQC's argument and ordered the JQC to produce the witness statements to the judge. (See Order, attached as Exhibit D). Special Counsel has reviewed the Court's Order in Judge Holloway's case and is aware that the JQC's previous claim of work-product privilege has been rejected by the Supreme Court. However, Special Counsel continues to withhold documents that the Judge is entitled to review pursuant to Rule 12(b), presumably hoping to damage the responding judge's ability to adequately prepare for his deposition.

7. The JQC's decision to withhold discoverable documents until it deposes the Judge also violates Florida Rule of Civil Procedure 1.280(d) since it is intentionally, and without cause, delaying Judge Albritton's entitlement to

discovery. The JQC's disregard for the rights of the responding judge should not be condoned by this Court.

WHEREFORE and by reason of the foregoing, Judge Albritton requests the Court to Strike the JQC's Motion to Compel since it was not filed before the Hearing Panel as required by Florida Judicial Qualifications Commission Rule 7(b). In the event the Court considers the JQC's Motion to Compel on its merits, Judge Albritton requests the Court to deny the Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December, 2005, the original of the foregoing Motion to Strike and Response to the Judicial Qualifications Commission's Motion to Compel has been filed via e-file@flcourts.org and furnished by FedEx overnight delivery to:

Honorable Thomas D. Hall
Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

with copies by U. S. Mail to:

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